Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
119-0035US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number	Filed
on ___**August 12, 2008**___	**August 12, 2008**	**via USPTP EFS by:**
Signature___ **via USPTO EFS by: /Rebecca R.Ginn/**	First Named Inventor **Rebecca R. Ginn**	
Typed or printed name ___**Rebecca R. Ginn**___	Art Unit **Mark Zimmer**	Examiner **10/826,596**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number ___**April 16, 2004**___

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 ___**Improved Blur**___

2624
___
Signature

Mia M. Thomas
___
Typed or printed name

510.00
___
Telephone number

August 12, 2008
___
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	**10/826,596**	Confirmation No. **1202**
Applicant	:	**Mark Zimmer**	
Filed	:	**April 16, 2004**	
TC/A.U.	:	**2624**	
Examiner	:	**Mia M. Thomas**	
Docket No.	:	**119-0035US**	
Customer No.	:	**29855**	
Title	:	**IMPROVED BLUR COMPUTATION ALGORITHM**	

PRE-APPEAL BRIEF CONFERENCE SUBMISSION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Final Office Action mailed May 12, 2008 and in conjunction with a Notice of Appeal. The Office is authorized to charge the Notice of Appeal Fee of $500 under 37 CFR § 41.20(b)(1) to Deposit Account 501922 referencing docket number 119-0035US. It is believed that no other fees are due in connection with this response. However, should any fees or refunds be due, the Office is authorized to charge such fees or credit such refunds to Deposit Account 501922 referencing docket number 119-0035US.

REMARKS

Claims 1-16 were pending and were finally rejected. These rejections are appealed. Reconsideration of these claims in a Pre-Appeal Brief Conference is requested.

The Cited References

The Examiner rejected each pending independent claim, *i.e.*, claims 1 and 11 under 35 U.S.C. § 103(a) as obvious over U.S. Patent 5,710,839 to Cok ("Cok").

Cok describes a method and apparatus for obscuring features of an image. More specifically, Cok describes a technique in which an image is acquired, a user designates a portion of the image to be obscured, and the computer applies one or more convolution kernels to the image to obscure the selected portion. *See* Cok at col. 3, ll. 1–18. For efficient computation, the kernels are "designed to correspond to the shape of the region." Cok, Abstract. Once the appropriate kernel are selected, the "kernel is applied iteratively from the border of the region to the center" until the selected region is obscured. Cok at col. 2, ll. 16-17.

Clear Error #1: Cok Does Not Teach Or Suggest Defining A Primary Kernel To Compute An Output Pixel As A Weighted Average Of A Plurality Of Pixels Of The Image Wherein A Spatial Relationship Between The Output Pixel And The Plurality Of Pixels Is Determined By A Step Size Of The Primary Kernel As Required by Independent Claims 1 and 11.

Claim 1 is drawn to a method of applying a blur to an image that includes three steps. The first of these steps is "defining a primary kernel to compute an output pixel as a weighted average of a plurality of pixels of the image *wherein a spatial relationship between the output pixel and the plurality of pixels is determined by a step size of the primary kernel*" (emphasis added). A substantially similar limitation is found in independent claim 11. In the Final Office Action mailed May 12, 2008, Examiner reaffirms her contention that this limitation is met by Cok at col. 3, l. 15 and Figs. 5a–5d. However, this is clear error as the cited teachings of Cok contain no teaching or suggestion that the spatial relationship between the output pixel and the plurality of pixels used in the computation is determined by the *step size* of the primary kernel. In fact, Cok says nothing at all about step size of the kernel. Instead, Cok teaches that the spatial relationship between the output pixel and the plurality of pixels is determined by the "shape of the region being obscured." Cok at col. 3, l. 15. For example, Cok, referring to Fig. 4, teaches

that "[f]our separate kernels are used to obscure the region of interest each with a rectangular shape matching the rectangular shape of the region." *Id.* at col. 4, ll. 1-3. Further, Cok notes that if the region to be obscured is changed, "kernels shaped to match the change in the shape [will be applied]." *Id.* at col. 6, ll. 55-56. There is no mention of step size in these teachings or anywhere else in the reference. Thus, Cok fails to meet this first limitation of claim 1.

Despite Examiner's contention that this limitation is met by Cok, Examiner later concedes that "Cok does not disclose that the computation of the spatial relationship between the output pixel and plurality of pixels is determined by the step size of the primary kernel." *See* Final Office Action of May 12, 2008 at p. 3. Examiner then contends that the limitation is made obvious as follows:

> Although Cok does not specifically disclose that the computation of the spatial relationship
> between the output pixel and the plurality of pixels is determined by the step size of the primary
> kernel, it is made obvious that "The shape of the region, including the use of a primary kernel
> and or step size used for processing can be arbitrary as long as it is a closed curve as
> described and the kernels of Figure 17 and 18 are alternative examples.

Final Office Action of May 12, 2008 at pp. 3-4. However, as pointed out by Applicant in the Response to the Office Action mailed October 29, 2007, the "quote" provided without citation by Examiner does not appear at all in Cok. The nearest passage in Cok is the paragraph beginning at col. 9, l. 10, which actually states:

> The shape of the region used for processing can be arbitrary as long as it is a closed curve and the kernels of FIGS. 17 and 18 modified according to curve sharpness can be used to process the region. Thus, it is possible for the user to outline the area to be obscured using conventional drawing techniques and have only that limited region obscured.

As can be seen, Cok teaches nothing at all about kernel step size in this passage. In fact, the words "step size" or even the concept are nowhere to be found in Cok. As such, the Examiner's subsequent arguments relating to Cok's teaching of an "arbitrary" kernel step size are simply without basis in the reference.

In summary, it is clear error to contend that Cok teaches the first limitation of claim 1. Claim 1 requires that "a spatial relationship between the output pixel and the plurality of pixels is

determined by a step size of the primary kernel." Conversely, Cok teaches that kernels are defined by the shape of the region being obscured. Further, it is clear error to contend that it would be obvious to modify Cok to meet the first limitation of claim 1. Not only does Cok fail to teach or suggest different kernel step sizes, one skilled in the art would have no reason to make such a modification.[1] The methods of kernel definition are so fundamentally different that the "proposed modification . . . of the prior art would change the principle of operation of the prior art invention being modified." MPEP § 2143.01(VI).

Clear Error #2: Cok Fails To Teach Or Suggest Increasing The Step Size Of The Primary Kernel To Create A Higher Order Primary Kernel And Applying The Higher Order Primary Kernel To The Intermediate Result To Produce A Result Image As Required by Independent Claims 1 and 11.

As a third limitation, Claim 1 further requires "increasing the step size of the primary kernel to create a higher order primary kernel and applying the higher order primary kernel to the intermediate result to produce a result image." A substantially similar limitation is found in independent claim 11. In the Final Office Action mailed May 12, 2008, Examiner reaffirms her contention that this limitation is met by Cok at col. 4, l. 20. However, this contention amounts to clear error as there is simply no teaching in Cok of iteratively applying kernels of different step sizes. In fact, Cok teaches exactly the opposite, *i.e.*, iterative application of kernels *having the same step size*. For example, Cok at col. 4, ll. 1–6 states that "[f]our separate kernels are used to obscure the region of interest . . . . Each kernel is used on one of the four sides of the rectangular region of interest. Alternatively, *the kernels can be considered as the same kernel but rotated when applied to each of the four sides*" (emphasis added). This passage makes clear that there is no change in step size or order of the kernel as required by claim 1.

Thus, Cok fails to teach the limitation of "increasing the step size of the primary kernel to create a higher order primary kernel and applying the higher order primary kernel to the intermediate result to produce a result image" as required by claim 1.

Conclusion

The Cok reference proposed by Examiner simply does not teach or suggest each limitation of the pending claims. Moreover, Examiner has failed to articulate any reason one

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[1] Applicant also notes that Examiner has articulated no reason, other than made up quotations from the reference,

skilled in the art would modify the reference to include these missing limitations. In fact, the mode of operation of the cited reference is so fundamentally different from the Applicant's claims that modifying the reference as proposed would change the principle of operation of the reference. Therefore, Examiner is in clear error by maintaining the rejection of the pending claims over this reference. Reversal of the Examiner, together with the reconsideration and withdrawal of these rejections is therefore requested.

one of ordinary skill in the art would modify Cok as proposed by the Examiner.